IN THE HIGH C OURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 529 OF 2004 Single Bench

APPELLANT
DEFENDANT

: Riaz Ahmad Siddique, Son of Niyaz Ahmad Siddique, aged about 32 years, Occupation : B usiness, resident of Parra dand, Ambikapur Tahsil : Ambikapur, District : Surguja (C.G.)

VERSUS

RESPONDENTS
PLAINTIFFS

: 1. Smt. Pratibha Devi Sinha, Wife of late Uma Shankar Prasad Sinha, aged about 55 years,

2. Madhur Shyam Sinha, Son of late Uma Shankar Prasad Sinha, aged about 35 years,

3. Manjul Shyam Sinha, Son of late Shri Vijay Shank a r Sinha, aged about 35 years

(All are resident of Deviganj Road, Ambikapur, Distt : Surguja C.G.)

P.R. No. 2456/04
Presented by Shri D.K. Vishwakarma
dated 02-11-04

DEFENDANT

4. Md. Nasim, Son of Md. Nazir, aged about 42 years, Tailoring Shop (Natra j Tailor) Deviganj Road, Ambikapur, Distt : Surguja (C.G.)

MEMORANDUM OF APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PRO CEDURE, 1908.

Valuation of Appeal Rs. 3,600.00

Court fee of Rs. 360.00 affixed as per the lower court.

...2/-

(33) AFR

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मामला क्रमांक S.A. 529/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

09-02-2005

Shri V.K.Pandey, learned counsel for the appellant.
Shri Manoj Paranjpe for the caveators.

Heard on the question of admission.

This Second appeal has been preferred by the appellant/defendant against the judgment and decree dated 12/10/2004 passed by the First Additional District Judge, Ambikapur confirming the judgment and decree dated 26/04/2003 passed by Civil Judge Class I, Ambikapur in Civil Suit No. 24/01/2002. The trial Court decreed the suit filed by the plaintiff for eviction on the ground that the original tenant had inducted sub tenant without written consent of the landlord according to Section 12 (1) (b) of the Chhattisgarh Accommodation Control Act which was subsequently confirmed by the First Appellate Court by the impugned judgment.

Case of the plaintiff before the trial Court was that the suit premises being a shop was given on rent by the plaintiff namely, Late Smt. Kallaso Devi and the respondent No. 3 for monthly rent of Rs. 250/- on the ground that there was an agreement of tenancy executed on 30/09/1987 between the plaintiffs and defendant No.1. The premises was taken on rent by defendant No.1 for the purpose of business of clothes. However, in the month of April 1993, appellant/defendant No.2 opened a hair cutting saloon and on enquiry it was found that defendant No.1 had inducted

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

defendant No.2 as sub tenant. Thereafter a registered legal notice dated 07/04/93 was sent to both the defendants. However, instead of replying to the said notice, the defendant No.2 instituted a Civil Suit against the plaintiffs before the Second Additional District Judge, Ambikapur praying for perpetual injunction against the forcible eviction from the premises. It was also alleged that the rent of the premises was not paid by the defendant since January 1993. In the joint written statement the case of the defendant was that as per the terms of this agreement executed between the plaintiff No.2 and defendant No.1, the premises was vacated by defendant No.1 on 30/09/90 and the vacant possession of the suit house was handed over to the plaintiffs and thereafter the same was given on rent as per the oral agreement. Service of legal notice was denied and it was stated that Civil Suit against forcible eviction was filed by defendant No.2 and the same was dismissed by the trial Court. However, defendant No.2 preferred an appeal in the High Court and the same is still pending. During the pendency of the suit plaintiff No.1 died and in her place respondents 1 and 2 were substituted. Defendants also raised their objection that after the death of plaintiff No.1, Kailaso Devi, all her legal heirs have not been brought on record within the period prescribed and therefore, the suit was not maintainable. Non payment of rent was also denied and it was stated that rent was being regularly paid by the defendants and there was nothing outstanding towards rent.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned trial Court by the impugned judgment decreed the suit holding that the suit premises was given on sub tenancy by defendant No.1 to appellant/defendant No.2 and there was no oral agreement of tenancy between the plaintiffs and appellant/defendant No.2 with respect to the tenanted premises and the plaintiffs were entitled for vacant possession of the said premises. However, the claim of the plaintiffs that the rent from February 1993 has not been paid was disallowed as not proved. The above judgment of the trial Court was subsequently confirmed by the first Appellate Court by the impugned judgment that the suit was decreed in favour of the respondents No.1,2 and 3 under Section 12 (1)(b) of the Chhattisgarh Accommodation Control Act (hereinafter referred to as Act, for convenience).

Learned counsel for the appellant assailed the impugned judgment and decree mainly on the grounds enumerated as under:

i) that the demand notice as per Section 12 of the Act has not been sent to the appellant;

ii) that after the death of late Kailaso Bai, the plaintiff No.1, all her legal heirs were not brought on record;

iii) that the suit premises was given on rent by the plaintiffs to the appellant/ defendant No. 2 and the finding of the trial Court that defendant No.1 inducted defendant No. 2 as sub tenant is contrary to the material available on record.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

In my opinion the law regarding sub letting is well settled as is observed in the leading case of **Associated Hotel of India Ltd. Vs. S.B. Sardar Ranjit Singh** reported in **AIR 1968 SC 933**, where it is held that in a suit by the land lord for eviction of tenant on the ground of sub letting, the landlord has to prove by leading evidence that (i) a third party was found to be in exclusive possession of the rented property, and (ii) parting of possession thereof was for monetary consideration.

The above principle was reiterated by the Apex Court from time to time. In the case of **Shama Prasad Raje Vs. Ganpat Rao** reported in **(2000) 7 SCC 522**.

It is not disputed in the present case that defendant No.1 was the tenant of the plaintiffs. The agreement of Ex. P-1 is also admitted. As per clause 4 of the said agreement the tenant shall not keep the sub tenant nor shall he hand over the possession of the tenanted premises to any other person. It is also not in dispute that the present appellant was found in exclusive possession of the property in question. The defence of the appellant/defendant No.2 that he was in possession of the tenanted premises in the capacity of tenant on the basis of oral agreement of tenancy, has been held by the Courts below to be not proved as the onus of proving this fact was on defendant No.2. However, the Courts below after critically analyzing the evidence of DW-1 and DW-2 arrived at the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conclusion that defendant has failed to prove the oral tenancy. Defendant No.1 has also taken a stand that the said premises was surrendered by him and thereafter it was given to defendant No.2 by the plaintiff. But no document to this effect has been filed either by the defendant No.1 or by defendant No. 2. Even neither of the defendants have been examined by the trial Court.

In these circumstances the finding recorded in this regard that defendant No.2 was inducted as sub tenant by defendant No.1 does not require any interference. Once it is held that defendant No.2 was inducted as sub tenant by defendant No.1, in that case there was no privity of contract between the plaintiffs/ respondents 1 to 3 and the appellant/defendant No.2 and therefore, the objection of the tenant that he was not served with the legal notice in terms of section 12 of the Act, has no merit.

The Apex Court in the matter of Rajbir Kaur Vs. S. Chokesiri & Co. reported in (1989) 1 SCC 19 and in the matter of Bharat Sales Ltd. Vs. LIC of India reported in (1998) 3 SCC 1, has held that sub tenancy or sub letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not it out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the Court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.

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आदेश पत्रक (पूर्वानुबन्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

It has also been held in the abovementioned cases that the burden of proof in respect of sub letting is though on the plaintiff but once the plaintiff is able to establish that the sub tenant is in exclusive possession of the tenanted premises, then the burden shifts on the sub tenant to establish that he is not the sub tenant but he has been inducted as a tenant by the original land lord and as already discussed hereinabove, the sub tenant in this case has failed to prove the oral agreement of tenancy.

After hearing counsel for the appellant as also counsel for the caveators and going through the material available on record, I am of the opinion that the impugned judgment and decree passed by the learned trial Court and subsequently confirmed by the first Appellate Court, does not require any interference. Inasmuch as there is no substantial question of law involved in the present.

Accordingly, for the reasons stated above, the appeal being devoid of any substance is liable to be dismissed and the same is dismissed.

However, there shall be no order as to costs.

Consequently, MCP No. 1582/2004 and IA No. 3293/2004 stand disposed of.

Sd/-
DHIRENDRA MISHRA
Judge

Jyo

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18.2.05
22.2.05
25/11/08
7/12/08